

Planned Parenthood v. Public Opinion: How Alternative Dispute Resolution Techniques Created a Crisis Response Strategy

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Cecile Richards walked into the Rayburn Office Building on September 29, 2015, to testify in front of the United States House of Representatives' Oversight and Governmental Reform Committee.¹ Her testimony was requested to examine Planned Parenthood's use of federal taxpayer funding.² As Ms. Richards took her seat in front of thirty-two Congressmen and women, a sea of cameras swarmed the witness and began snapping photographs a mere two feet from the CEO's eyes.³ The cameras' flashes reflected off Ms. Richards' gold Planned Parenthood broach—worn like a piece of armor—until Chairman Jason Chaffetz called the hearing to order. While all parties expected an eventful day, no one would have guessed at ten o'clock that morning that this political battle would last for nine hours.⁴

The Congressional hearing was speculated to be a contentious political fight and it did not disappoint.⁵ One minute and three seconds into the hearing, in his opening statement, Chairman Chaffetz began the attack on Planned Parenthood and its CEO.⁶ Using a personal anecdote about various family members' battle with cancer, the Chairman exploited his personal losses to launch an attack on the organization's federal funding.⁷ He concluded his opening remarks by claiming, "If [Planned Parenthood] is going to accept taxpayer dollars, they have to withstand the scrutiny of Congress...."⁸ After eleven minutes and fifty-three seconds of unsubstantiated claims, Chairman Chaffetz made it clear that his Committee was out for blood.

¹ *Planned Parenthood's Taxpayer Funding*, OVERSIGHT & GOVERNMENT REFORM (Sept. 29, 2015, 10:00 AM), <https://oversight.house.gov/hearing/18201/>.

² *Id.*

³ *Id.* The Oversight and Governmental Reform Committee was made up of 25 Republican Representatives and 17 Democratic Representatives. Representative Jason Chaffetz of Utah chaired the Committee.

⁴ *Planned Parenthood President Cecile Richards Testimony on Taxpayer Funding*, C-SPAN (Sept. 29, 2015), <https://www.c-span.org/video/?328410-1/planned-parenthood-president-cecile-richards-testimony-taxpayer-funding&start=16522>.

⁵ Amber Phillips, *5 moments when Congress's Planned Parenthood hearing got heated*, WASHINGTON POST (Sept. 29, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/09/29/the-5-most-contentious-exchanges-from-congress-planned-parenthood-hearing/>; Michael D. Shear, *Planned Parenthood's Leader Pushes Back Against G.O.P. Critics*, THE NEW YORK TIMES (Sept. 29, 2015), http://www.nytimes.com/2015/09/30/us/politics/planned-parenthood-congress-republicans.html?_r=1.

⁶ *Planned Parenthood President*, *supra* note 4.

⁷ Tom LoBianco, *Planned Parenthood President Grilled at House Hearing*, CNN (Sept. 30, 2015 9:22 AM), <http://www.cnn.com/2015/09/29/politics/planned-parenthood-hearing-cecile-richards/index.html>.

⁸ *Planned Parenthood President*, *supra* note 4.

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Legal battles and public scandals are no longer determined solely in the courtroom, but instead are increasingly won in the “court” of public opinion. Public opinion significantly influences the results of a dispute or scandal.⁹ There is a growing concern that inaccurate reporting will influence investigations and result in unsubstantiated or retaliatory charges against those in the public spotlight.¹⁰ Due to this risk, organizations must be prepared to respond in an effective and efficient way. When vulnerable organizations are accused of wrongdoing by the public, public relations strategies are necessary to successfully avoid the traditional legal consequences, as well as the public’s subsequent unpredictable and mighty wrath.¹¹

With the twenty-four hour news cycle and constant social media updates, organizations are more vulnerable to scandal than ever before.¹² These groups must be prepared to effectively respond to allegations and avoid potentially escalating the situation any further. Public relations situations become alarming when a scandal progresses from a simple inconvenience to a crippling interruption to the flow of day-to-day business.¹³ A situation is considered a public relations crisis when a major event or set of events with a potentially negative or fatal outcome affects the organization, as well as its perception, products, services, or good name.¹⁴ The organization’s response to a crisis is pivotal to its survival. The following article proposes a unique crisis communication strategy that utilizes the teachings and techniques found in alternative dispute resolution. Titled the *Richards Response Strategy*, the proposal uses Planned Parenthood’s crisis response to its 2015 video scandal as an example for other organizations to follow. Beginning with Section I, the article details the events surrounding Planned Parenthood’s public crisis. Section II explains why alternative dispute resolution techniques can make for

⁹ Joseph W. Martini & Charles F. Wilson, *Defending Your Client in the Court of Public Opinion*, 27 APR CHAMPION 20, 22 (2004).

¹⁰ *Id.*

¹¹ *Id.* at 34. While some may consider dispute resolution processes to be non-traditional, these problem solving systems are continuously becoming more mainstream. As familiarity with dispute resolution expands, practitioners and professionals outside of the legal profession begin to see the problem-solving methods’ immense value. Alternative dispute resolution systems and strategies can be used by organizations because they are not confined to only legal issues. Dispute resolution processes, procedures, and policies have been increasingly institutionalized in a variety of contexts within multiple professions. Maria R. Volpe, *Post Disaster ADR Responses: Promises and Changes*, 26 FORDHAM ENVTL. L. REV. 95, 104 (2014).

¹² Martini & Wilson, *supra* note 9, at 34.

¹³ TOM WATSON & PAUL NOBLE, *PR IN PRACTICE: EVALUATING PUBLIC RELATIONS: A GUIDE TO PLANNING, RESEARCH AND MEASUREMENT* 135 (3rd ed. 2014).

¹⁴ *Id.* at 139.

a successful crisis communication strategy. Section III describes the *Richards Response Strategy* and illustrates how organizations can implement negotiation and mediation techniques to combat scandals. By following Planned Parenthood's example, organizations can implement the *Richards Response Strategy* to effectively combat scandals using alternative dispute resolution techniques.

I. PLANNED PARENTHOOD'S PUBLIC SCANDAL

The Planned Parenthood Federation of America is no stranger to controversy. Their most recent public scandal will illustrate how the implementation of alternative dispute resolution techniques can deliver organizations from public relations disasters. This section provides a basic understanding of the parties involved and the conflicting details surrounding the infamous controversial videos.

Planned Parenthood describes itself as "a trusted healthcare provider, an informed educator, a passionate advocate, and a global partner helping similar organizations around the world."¹⁵ In stark contrast, political adversaries have accused the healthcare provider of being "far more lethal than the Ku Klux Klan," "a criminal enterprise," and "similar to a heroin dealer."¹⁶ These persistently polarizing views have festered over the years and cumulated in the largest public scandal to threaten the organization in its 100-year history.

Since 1916, Planned Parenthood has been a major and controversial political force. Beginning with the United States' first birth control center in Brooklyn, New York, the organization remains a champion for women's health and reproductive rights to this day.¹⁷ Planned Parenthood has over fifty-nine locally governed affiliates nationwide that manage more than 650 health

¹⁵ PLANNED PARENTHOOD: ABOUT US—WHO WE ARE, <https://www.plannedparenthood.org/about-us/who-we-are/mission> (last visited Mar. 28, 2016) (Planned Parenthood Federation of America is a nonprofit clinic which is separate from its political division. The Planned Parenthood Action Fund is a national not-for-profit organization that acts as the advocacy and political arm of Planned Parenthood Federation of America. This political arm is a separate entity and does not receive any government funding.).

¹⁶ Nina Bahadur, *18 Real Things Republicans Have Said About Abortion and Planned Parenthood*, HUFFINGTON POST (Sept. 6, 2015, 9:03 AM), http://www.huffingtonpost.com/entry/18-distressing-things-gop-members-have-said-about-abortion-and-planned-parenthood_us_5612ce63e4b0dd85030ce49b.

¹⁷ Katharine Dexter McCormick Library, *Opposition Claims About Margaret Sanger* (Oct. 2014), https://www.plannedparenthood.org/files/8013/9611/6937/Opposition_Claims_About_Margaret_Sanger.pdf.

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centers.¹⁸ Planned Parenthood is one of the nation's largest healthcare providers, with one in five women receiving medical care from the organization.¹⁹ These health centers provide birth control, cancer screenings, testing and treatment for sexually transmitted diseases and infections, and other medical services to over 2.7 million patients.²⁰ Medical and surgical abortions total three percent of the entirety of Planned Parenthood's services.²¹

Although Planned Parenthood has weathered many storms in its fight to retain federal funding and protect women's reproductive health, the summer of 2015 proved to be its toughest battle yet.²² The Center for Medical Progress (CMP) is a non-profit organization that claims to be a "group of citizen journalists dedicated to monitoring and reporting on medical ethics and advances."²³ This "citizen journalist" group illegally recorded the private conversations between Planned Parenthood doctors and its administrative staff without consent as they discussed the procurement and selling of fetal organs and tissue.²⁴ The videos were released in July 2015 and spurred a narrative that Planned Parenthood was illegally profiting from the sale of fetal tissue. The largest women's health organization in the United States found itself in the middle of a media circus and in the crosshairs of a right-wing political firestorm.

Cable news immediately jumped on the story and leaders from both sides of the aisle could not avoid questions regarding Planned Parenthood. Because the organization is an influential player in Democratic politics and is the conservative movement's greatest target, it was no surprise that the videos

¹⁸ PLANNED PARENTHOOD, *supra* note 15 (over 10,000 people work at Planned Parenthood's offices).

¹⁹ *Planned Parenthood President*, *supra* note 4.

²⁰ *Id.*

²¹ PLANNED PARENTHOOD, *supra* note 15 (none of Planned Parenthood's federal funding is used to pay for abortion services).

²² The organization first started receiving federal funding in 1970 when a Republican president, Richard Nixon, signed the Family Planning Services and Population Research Act into law. The bill helped pay for medical services and reimbursements to Planned Parenthood for Medicaid patients but strictly prohibited the use of federal funds for abortions. Planned Parenthood and its unapologetic belief that "a women's right to control her body is the foundation of her human rights" has been the catalyst for disputes with politicians and interest groups that would restrict a woman's right to have a safe and legal abortion. See Katharine Dexter McCormick Library, *supra* note 17.

²³ The CMP does not publicly disclose where it receives its funding or if it is associated with a parent group. See THE CENTER FOR MEDICAL PROGRESS, <http://www.centerformedicalprogress.org/about-us/> (last visited Apr.11, 2016).

²⁴ Alan Zarembo, *U.S. Judge Halts Release of Secretly Recorded Videos of Abortion Providers*, L.A. TIMES (Aug. 1, 2015, 7:37 PM), <http://www.latimes.com/local/california/la-me-0802-court-order-20150802-story.html>.

attracted attention. While progressives initially showed timid support for the organization, conservatives demanded criminal charges be brought against Planned Parenthood's doctors and administration. After the videos were comprehensively reviewed, experts in the film field deemed the recordings to be "heavily edited" to create a misleading portrayal of wrongdoing.²⁵ These reports incited visceral reactions that continued to deepen the divide between pro-choice and pro-life advocates.

As CMP released more videos, the Republican Speaker of the House of Representatives, John Boehner, called for a Congressional investigation into the Planned Parenthood health clinics.²⁶ Conservatives described the proposed investigation as a routine examination into Planned Parenthood's procurement and distribution of fetal tissue for profit, while progressives knew it was a thinly veiled political maneuver to defund Planned Parenthood and further restrict access to safe and legal abortions.

Planned Parenthood faced a highly politicized conflict in a tumultuous political environment. With high stakes and the media spotlight focused on the organization's response, Planned Parenthood fought for its very survival. Inspired by Cecile Richards and Planned Parenthood's public relations response to the videos, the *Richards Response Strategy*, proposed below, looks to this organization to examine how applying alternative dispute resolution skills can successfully resolve a dispute.

II. SUCCESSFUL RESPONSE STRATEGIES AND ALTERNATIVE DISPUTE RESOLUTION PROCESSES

When responding to a scandal, an organization's crisis communication strategy is pivotal to its survival. Public relations consultants and communication experts agree that successful crisis communication response strategies share three characteristics: the response must 1) focus on relationships, 2) be flexible, and 3) be disciplined.²⁷ These characteristics correspond with the shared characteristics found throughout alternative dispute resolution processes. Just like communication strategies, while no

²⁵ Jackie Calmes, *Planned Parenthood Videos Were Altered, Analysis Finds*, NEW YORK TIMES (Aug. 27, 2015), http://www.nytimes.com/2015/08/28/us/abortion-planned-parenthood-videos.html?_r=0.

²⁶ Eugene Scott, *Lawmakers call for Hill hearings on Planned Parenthood*, CNN POLITICS (July 15, 2015, 7:33 PM), <http://www.cnn.com/2015/07/15/politics/republicans-call-for-planned-parenthood-investigation/>.

²⁷ See generally CHRISTOPHER LEHANE, MARK FABIANI, & BILL GUTTENTAG, *MASTERS OF DISASTER: THE TEN COMMANDMENTS OF DAMAGE CONTROL* (2012); WATSON & NOBLE, *supra* note 13.

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alternative dispute resolution process is the same, there are universally shared characteristics found throughout the field. All alternative dispute resolution processes promote maintaining existing relationships, reaching unique solutions, and valuing the parties' interests over their positions.²⁸ These alternative dispute resolution characteristics match perfectly with the necessary characteristics found in successful crisis communication response strategies. Organizations can utilize alternative dispute resolution processes to create successful strategies when responding to a scandal.

A. RELATIONSHIPS: MAINTAINING EXISTING RELATIONSHIPS

Conflicts and scandals can easily turn nasty, destroying previously held long-lasting relationships between parties. The test to determine if an organization is facing a scandal consists of one simple question: Is there a threat to the relationship with an audience that must be maintained for the organization to survive and thrive?²⁹ If the answer is yes, then the organization must focus on its essential relationships. The Crisis Communication Principles, established by Dr. Grunig, argue that an organization can withstand any crisis as long as it maintains its relationships with key stakeholders.³⁰ This theory follows the consensus that maintaining relationships is vital to surviving heightened public scrutiny.³¹ If the organization's relationships are not maintained it will not be able to return to its standing prior to the scandal.³² Organizations need strong and healthy relationships to prosper.³³

By utilizing alternative dispute resolution processes, organizations can calm the concern of maintaining relationships. Because parties to dispute resolution processes are often familiar with one another and will need to continue their relationship after the process, repairing and maintaining the existing relationship is a primary goal of alternative dispute resolution.³⁴ Alternative dispute resolution methods allow for parties to heal by openly voicing their grievances and expressing their feelings.³⁵ The various

²⁸ STEPHEN B. GOLDBERG, FRANK E.A. SANDERS, NANCY H. ROGERS, & SARAH RUDOLPH COLE, *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 3 (Vicki Been et. al. eds., 5th ed. 2007).

²⁹ LEHANE ET AL., *supra* note 27, at 5.

³⁰ WATSON & NOBLE, *supra* note 13, at 140.

³¹ *Id.*

³² *Id.*

³³ *See generally* LEHANE ET AL., *supra* note 27.

³⁴ GOLDBERG ET AL., *supra* note 28, at 6; ROBERT H. MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 251(2000).

³⁵ GOLDBERG ET AL., *supra* note 28, at 8.

alternative dispute resolution processes encourage parties to focus on the future relationship rather than rehashing the minute details of a previous dispute.³⁶ This encouragement is a major benefit for organizations that need to focus on maintaining relationships during a scandal.

B. FLEXIBILITY: REACHING UNIQUE SOLUTIONS

Scandals do not simply go away. The media and the public must be fully satisfied before moving past an organization's scandal.³⁷ In order to effectively move past the scandal, the public needs to view the organization as credible and accountable. The organization's public relations response must protect, preserve, and promote its credibility.³⁸ Every action should be evaluated by its impact on the perception of the organization's credibility.³⁹ To accomplish this, the response strategy must be flexible. Organizations with flexible responses are seen as accountable and credible, without having to accept responsibility for the scandal.⁴⁰ Instead, organizations can creatively craft a public relations response that flexibly responds to the public's concerns. This conveys accountability and confidence to the public. This unique response is a result of a flexible crisis communications strategy that satisfies both the media and the public.

Alternative dispute resolution processes produce the mutually beneficial, unique solutions that successful public relations strategies require. Dispute resolution systems enable parties to reach unique resolutions that are often unobtainable through traditional legal processes.⁴¹ Because participants volunteer to engage in the dispute resolution processes, they are often more willing to work towards a resolution.⁴² The resolutions produced during dispute resolution process are unique to the judgements handed down by a judge.⁴³ The flexible processes allow for parties to address other, non-monetary, interests that are often ignored in litigation.⁴⁴ These creative solutions are often more sustainable because the parties created them.⁴⁵ It is far less likely that the dispute will reoccur because the parties agree to the

³⁶ *Id.*

³⁷ See generally LEHANE ET AL., *supra* note 27.

³⁸ *Id.* at 49.

³⁹ *Id.*

⁴⁰ See generally WATSON & NOBLE, *supra* note 13.

⁴¹ GOLDBERG ET AL., *supra* note 28, at 8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ MNOOKIN ET AL., *supra* note 34, at 241.

⁴⁵ GOLDBERG ET AL., *supra* note 28, at 8.

terms of the dispute resolution process.⁴⁶ Facilitators encourage parties to take active roles in the process and assist the participants in identifying imaginative settlement options.⁴⁷ These processes reframe a party's position to be more compatible with a proposed unique solution.⁴⁸ Alternative dispute resolution processes promote and encourage its participants to reach their own creative solutions.

For organizations facing intense public scrutiny, individualized and creative solutions are necessary for survival. Organizations need the flexibility and creativity displayed in alternative dispute resolution systems. When organizations are creative with their public relations strategies, the public perceives the organizations to be credible and the scandal is more likely to reach a sustainable resolution. Similarly, alternative dispute resolution processes promote the unique solutions that result in the public perception that an organization is both credible and accountable.

C. DISCIPLINE: VALUING INTERESTS OVER POSITIONS

Public scandals place a strain on the organization and its leadership.⁴⁹ The heightened scrutiny requires organizations to be disciplined in its response. Among many other benefits, a disciplined response strategy commits the organization to a mindset that thinks in future terms.⁵⁰ This commitment requires implementation of a public relations strategy that is disciplined enough to address the motivating factors creating the threats to the organization. Organizations must recognize the driving forces of the scandal if it wants to successfully resolve the problem.⁵¹ Without solving the root of the problem, it will remain an issue for the organization in the future. A successful public relations strategy is disciplined, allowing the organization to search for the cause of the scandal.

Alternative dispute resolution processes value a party's interest over a party's position. Interests motivate parties.⁵² They are the silent movers behind the stubborn positions that parties hold.⁵³ Because dispute resolution systems focus on party interests, the emphasis is on the source of the dispute. These

⁴⁶ *Id.*

⁴⁷ DWIGHT GOLAN & JAY FOLBERG, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL* 96 (2006).

⁴⁸ *Id.*

⁴⁹ LEHANE ET AL., *supra* note 27, at 47.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES* 43 (3rd ed. 2011).

⁵³ *Id.*

processes aim to prevent the issue from recurring. Because parties are easily distracted by positions, alternative dispute resolution processes promote the level of discipline required to focus on the problem's origin. Alternative dispute resolution processes address the root of the problem by addressing the interests that created the problem in the first place. Crisis communication response strategies would benefit from this emphasis. With a disciplined public relations strategy, organizations follow alternative dispute resolution processes by valuing interests over positions to successfully create lasting solutions.

III. THE *RICHARDS RESPONSE STRATEGY*

Organizations can utilize the techniques and skills found in alternative dispute resolution methods to effectively respond to a public scandal. Crisis communication strategies are aimed at an organization's internal actions and external rhetoric.⁵⁴ Internal actions are the organization's responses to allegations, while external rhetoric is the organization's public message.⁵⁵ These two can be successfully addressed by implementing techniques found in negotiation⁵⁶ and mediation.⁵⁷ By employing these techniques simultaneously, organizations can combat allegations and restore the public's trust. The proposed strategy is titled the *Richards Response Strategy* and is comprised of two components—the *Combative Component* and the *Collaborative Component*.⁵⁸ The *Combative Component* proposes that the organization act as a competitive negotiator to combat the allegations of wrongdoing. The *Collaborative Component* proposes that organizations emulate a mediator in order to assuage the public and regain trust. This two-part strategy provides organizations with a response that successfully avoids the disastrous consequences of a public relations crisis.

⁵⁴ W. TIMOTHY COOMBS, POLITICAL PUBLIC RELATIONS 215 (Jesper Stromback & Spiro Kioussis eds., 2011).

⁵⁵ *Id.*

⁵⁶ Negotiation is defined as the use of communication for the purpose of persuasion but in a dispute resolution context is a meeting of two parties to produce a mutually-agreed upon solution. GOLDBERG ET AL., *supra* note 28, at 17.

⁵⁷ Mediation is a negotiation that is facilitated with the assistance of a third party. *Id.*

⁵⁸ The *Richards Response Strategy* is named after Cecile Richards, Planned Parenthood's President and CEO. The strategy was inspired by Planned Parenthood's actions taken to combat the conservative anti-choice movement. The organization's impressive implementation attests to the proposed strategy's ability to successfully defend against accusations and simultaneously earn back the public's trust. Planned Parenthood's response to the 2015 video scandal exemplifies the alternative dispute resolution techniques that shape the strategy.

A. COMBATIVE COMPONENT: NEGOTIATION

The primary concern for an organization facing a public relations scandal is how to combat the damning allegations of wrongdoing. The *Combative Component* is responsible for confronting both the accusers and accusations by implementing competitive negotiation techniques. Competitive negotiators view all negotiations as win-lose scenarios or zero-sum games.⁵⁹ This perspective results in negotiators coming to the bargaining table fully prepared with a comprehensive understanding of the dispute. Organizations should duplicate this level of preparation when facing a public relations scandal. When acting as a competitive negotiator, the *Combative Component* calls on organizations to utilize four negotiation tactics: 1) Identify Interests, 2) Determine the Best Alternative to an Agreement, 3) Claim Value to Maximize Returns, and 4) Present a Strong Defense. By implementing these techniques, organizations can successfully combat accusers and their false allegations.

1. *Identify Interests*

Identifying the interests of the parties is often the first thing a negotiator does when preparing for the bargaining table. Interests define the problem in a negotiation.⁶⁰ The basic problem in a negotiation is not the conflicting positions but the conflicting interests.⁶¹ While it is important to understand the party's position, identifying interests and understanding the value attributed to each interest is often more helpful to the negotiator.⁶² Interests are underlying and can be hard to identify.⁶³ Often unexpressed, intangible, and inconsistent, each party's interests show what side it truly values.⁶⁴ The most powerful interests are basic human needs.⁶⁵ These basic desires and fears reveal

⁵⁹ Competitive bargaining is a type of negotiation strategy—sometimes known as hard, distributive, or positional—that has the purpose of maximizing the competitive bargainer's gain over the gain of those with whom he negotiates. See generally Gary Goodpaster, *A Primer on Competitive Bargaining*, in NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS (Charles B. Wiggins & L. Randolph Lowry eds., 2d ed., 1997).

⁶⁰ See generally FISHER ET AL., *supra* note 52.

⁶¹ *Id.* at 42.

⁶² RUSSELL KOROBKIN, NEGOTIATION THEORY AND STRATEGY 139 (1st ed., 2002).

⁶³ FISHER ET AL., *supra* note 52, at 45.

⁶⁴ KOROBKIN, *supra* note 62; FISHER ET AL., *supra* note 52, at 45.

⁶⁵ FISHER ET AL., *supra* note 52, at 50 ("Basic human needs include: security, economic well-being, a sense of belonging, recognition, control over one's life.").

themselves through the party's position. Interests motivate negotiations and must be identified if a party hopes to reach a beneficial resolution.

Interests can be compatible and shared between the parties.⁶⁶ When there are overlapping interests, parties can create solutions that satisfy their common values.⁶⁷ When parties use shared interests to create mutually beneficial solutions, they are creating "mutual gains."⁶⁸ Competitive negotiators do not value mutual gains unless they maximize their own return.⁶⁹ Organizations that have shared interests with other parties involved in the public relations scandal should capitalize on those because it will ultimately maximize the individual returns. Regardless of the organization or the dispute, every organization's primary interest is to end the scandal and return to its former status. If parties involved in a scandal share interests, it is more likely that they will cooperate to end the crisis. Compatible interests are valuable to negotiators and organizations.

While interests will always influence the process, the way parties address those interests varies depending on the negotiator's strategy. Competitive negotiators have absolutely no concern for an opposition's interests.⁷⁰ The opposing party's interests are relevant only if they can be used to maximize the negotiator's own returns. The same perspective applies to organizations implementing the *Combative Component*. Similar to a negotiator, the organization identifies the interests of all parties but will only address the opposing party's interests if it is relevant to the organization's individual interests.

In order to identify interests, the parties must first be identified. The four parties involved in the Planned Parenthood video dispute were Planned Parenthood, the anti-choice coalition, the media, and the American public. These parties all had various interests related to the video scandal. Planned Parenthood's interests were to survive the public scrutiny, retain funding from federal and state governments, protect *Roe*,⁷¹ and continue providing medical care to its patients. The anti-choice coalition's interests were defunding Planned Parenthood, reversing *Roe*, and terminating Planned Parenthood permanently. The media's interests were to determine the truth, to inform the public of that truth, and to increase its ratings using catchy headlines. The American public's interests were simple, they wanted access to affordable

⁶⁶ *Id.* at 44.

⁶⁷ KOROBKIN, *supra* note 62, at 141.

⁶⁸ FISHER ET AL., *supra* note 52, at 72.

⁶⁹ CHARLES B. WIGGINS & RANDOLPH L. LOWRY, *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 18 (2nd ed. 2005).

⁷⁰ *Id.*

⁷¹ See generally *Roe v. Wade*, 410 U.S. 113 (1973).

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healthcare and for organizations to obey the law. The public was not generally concerned with the scandal's political implications.

Acting as a competitive negotiator, Planned Parenthood considered the anti-choice interests to be irrelevant. The interests were conflicting and aimed to undermine Planned Parenthood's existence. Planned Parenthood benefited from studying the anti-choice groups' interests and using this enhanced understanding to prepare itself for further accusations and to implement a strategy that directed its attacks at the anti-choice interests.

Planned Parenthood believed that it shared the American public's interests. The American people want access to quality healthcare⁷² and Planned Parenthood provides healthcare to over 2.5 million patients.⁷³ The public also had an interest in organizations obeying the laws. As public distrust of organizations and the government grows,⁷⁴ the public continues to grow sick and tired of public scandals—no pun intended. Planned Parenthood argued that they obeyed all of the relevant laws. Contending that it was the victim of a crime, not the criminal, Planned Parenthood believed that it has shared interests with the public.

By attempting to persuade the American people that they have shared interests with Planned Parenthood, the organization and the media found that their interests intersected. Parties that recognize shared interests are more likely to work effectively together.⁷⁵ The media wanted eye-catching headlines that would increase ratings. Planned Parenthood saw this as a mutual interest because the organization needed a large audience to spread its message and fight against the allegations stemming from the CMP videos. Planned Parenthood took advantage of the shared interests by using free media⁷⁶ to

⁷² Healthcare is a basic human interest and a public good. See generally Mariah McGrill, *The Struggle to Achieve the Human Right to Health Care in the United States*, 25 S. CAL. INTERDISC. L.J. 625 (Summer 2016); *Health and human rights*, WORLD HEALTH ORGANIZATION (Dec. 2015), <http://www.who.int/mediacentre/factsheets/fs323/en/>; Karen Daley, *Health care as a basic human right*, THE AMERICAN NURSE (Apr. 16, 2017) <http://www.theamericannurse.org/2012/10/05/health-care-as-a-basic-human-right/>.

⁷³ PLANNED PARENTHOOD <https://www.plannedparenthood.org/about-us/who-we-are/planned-parenthood-at-a-glance> (last visited Jan. 9, 2017).

⁷⁴ *Beyond Distrust: How Americans View Their Government*, PEW RESEARCH CENTER (Nov. 23, 2015), <http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/>; Jeff Zeleny & Megan Thee-Brenan, *New Poll Finds a Deep Distrust of Government*, N.Y. TIMES (Oct. 25, 2011), <http://www.nytimes.com/2011/10/26/us/politics/poll-finds-anxiety-on-the-economy-fuels-volatility-in-the-2012-race.html>.

⁷⁵ KOROBKIN, *supra* note 62, at 141.

⁷⁶ THE TEXAS POLITICS PROJECT, https://texaspolitics.utexas.edu/archive/html/vce/features/0903_01/freemedia.html (last visited Jan. 9, 2017) (free media is considered anything that puts a campaign or policy

combat against the anti-choice coalition and speak directly to the American public.

2. *Determine the Best Alternative to a Negotiated Agreement*

Negotiators must make certain calculations before entering a negotiation—the most important being the minimum amount of money that they are willing to accept.⁷⁷ In order to calculate this with all of the variables, the negotiator must first review all of the alternatives to reaching an agreement.⁷⁸ These alternatives are often limitless and can test the creativity of a negotiator.⁷⁹ After brainstorming and reviewing the various possibilities, the negotiator must determine the most desirable alternative.⁸⁰ This outcome is called the “Best Alternative to a Negotiated Agreement” or the BATNA.⁸¹

The BATNA acts as “the standard against which a proposed agreement should be measured.”⁸² This standard is the only calculation that protects negotiators from accepting overtly unfair terms or rejecting terms that are in their best interest.⁸³ Parties must determine their BATNA to know whether or not to make a deal. BATNAs vary depending on the parties and the facts of the dispute.⁸⁴ The attractiveness of a party’s best alternative holds significant sway over the probability of a resolution.⁸⁵ The relative bargaining power of two parties depends on their willingness to walk away without reaching a

positions in the news, usually with the hope that it displaces the possible coverage of the competition).

⁷⁷ KOROBKIN, *supra* note 62, at 37.

⁷⁸ *Id.* at 38.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² FISHER ET AL., *supra* note 52, at 102; *See generally* J. WILLIAM BRESLIN & JEFFERY Z. RUBIN, *NEGOTIATION THEORY AND PRACTICE* (Cambridge, MA: Program on Negotiation at Harvard Law Sch., 1991).

⁸³ *Id.* at 102.

⁸⁴ Usually, dispute settlement negotiators will have identified the BATNAs for both sides. The options for “deal-making negotiations” are broader in creativity and scope. Negotiators in deal-making disputes will often have a harder time because settlements can vary, but those same negotiators have a far greater opportunity to achieve mutually beneficial solutions because of the potential for creative solutions. While these opportunities do exist, deal-making negotiators have vastly different BATNAs in comparison to their opposing parties. The creative options make it difficult to determine the opposing party’s best alternative option. WIGGINS & LOWRY, *supra* note 69, at 9.

⁸⁵ FISHER ET AL., *supra* note 52, at 103.

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deal.⁸⁶ Parties with superior BATNAs have greater bargaining power at the start of the negotiation.⁸⁷

The more a negotiator knows about another party's alternatives, the more prepared the negotiator is for the negotiation.⁸⁸ By identifying an opposition's BATNA, negotiators are better able to predict the opposition's strategy.⁸⁹ Negotiators that do not calculate the opposition's BATNA are vulnerable to underestimating the legal options and often do not fully comprehend the financial realities.⁹⁰ Through external research and internal preparation, negotiators can determine their opposition's BATNA in order to avoid any potential vulnerabilities.⁹¹ By calculating the best alternatives for all of the parties, the competitive negotiator will be most prepared and will begin the negotiation with an early advantage.

While a more applicable phrase may be "Best Alternative to Resolving a Public Relations Dispute," all of the same analysis applies. Organizations must determine the best alternative to not reaching a timely resolution with the various other parties to a public dispute. Just like a negotiator, organizations must determine its alternatives as well as the alternatives for the other parties involved. This is important when opposing sides have BATNAs that are more attractive than reaching a resolution. When this occurs, the organization must begin to prepare for its own best alternative option.

While the opposing parties made it quite clear that their best alternative option was more valuable than reaching a timely resolution, Planned Parenthood's best alternative was to pursue litigation against the anti-choice coalition and the state governments that attempted to defund the clinics. The media and the anti-choice groups did not feel the need to reach a resolution because their best alternative option was more beneficial to their interests. The anti-choice coalition preferred to continue releasing videos with the hope that it would create enough public pressure to permanently terminate Planned Parenthood. The media's best alternative was to continue exploiting the scandal for higher ratings and larger revenues until a different organization faced a different scandal.

Although determining the best alternative options did not resolve the public relations crisis, Planned Parenthood pursued its BATNA through litigation and won in the courtroom. The courts ruled in favor of Planned

⁸⁶ *Id.* at 104.

⁸⁷ *Id.*

⁸⁸ *Id.* at 107.

⁸⁹ *Id.*

⁹⁰ WIGGINS & LOWRY, *supra* note 69, at 9.

⁹¹ KOROBKIN, *supra* note 62, at 41.

Parenthood in a string of cases that reaffirmed *Roe v. Wade*⁹² and prohibited states from revoking the organization's funding.⁹³ The courts also determined that the video footage was obtained illegally, which halted any further distribution of the videos.⁹⁴ By identifying its best alternative option, Planned Parenthood gained further Constitutional protections that it may not have otherwise received.

3. *Claim Value to Maximize Returns*

Negotiators will either claim value or create it depending on their negotiation strategy. Claiming value involves dividing the total amount of value that exists and is available to the parties.⁹⁵ The primary goal of a competitive negotiator is to claim the largest share of disputed goods to maximize its own gain.⁹⁶ Competitive negotiators value personal success over the opposing party's interests.⁹⁷ These negotiators tend to narrowly define success.⁹⁸ With the belief that negotiations are zero-sum games, competitive negotiators will always attempt to maximize their returns by claiming value.⁹⁹

In order to maximize the return, a competitive negotiator intensely prepares to "win" the negotiation. Competitive negotiators time their actions

⁹² Adam Liptak, *Supreme Court Strikes Down Texas Abortion Restrictions*, N.Y. TIMES (June 27, 2016), <http://www.nytimes.com/2016/06/28/us/supreme-court-texas-abortion.html>.

⁹³ Robert Higgs, *Federal Judge Rules Ohio's Effort to Defund Planned Parenthood is Unconstitutional Permanently, Blocks Law*, CLEVELAND PLAIN DEALER (Aug. 12, 2016), [http://www.cleveland.com/open/index.ssf/2016/08/](http://www.cleveland.com/open/index.ssf/2016/08/federal_judge_rules_ohios_effo.html)

[federal_judge_rules_ohios_effo.html](http://www.slate.com/blogs/xx_factor/2016/10/28/10th_circuit_will_not_rehear_planned_parenthood_defunding_case.html); Mark Joseph Stern, *Appeals Court Continues to Block Utah's Attempt to Defund Planned Parenthood*, SLATE (Oct. 28, 2016), http://www.slate.com/blogs/xx_factor/2016/10/28/10th_circuit_will_not_rehear_planned_parenthood_defunding_case.html.

⁹⁴ Zarembo, *supra* note 24.

⁹⁵ Brad Spangler, *Creating and Claiming Value*, BEYOND INTRACTABILITY (Sept. 2003), <http://www.beyondintractability.org/essay/creating-value>.

⁹⁶ MNOOKIN ET AL., *supra* note 34, at 51; Spangler, *supra* note 95.

⁹⁷ John S. Murray, *Understanding Competing Theories of Negotiation*, in NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS 18 (Charles B. Wiggins & L. Randolph Lowry eds., 2d ed., 1997).

⁹⁸ Goodpaster, *supra* note 59, at 10 (Explaining that the definition for success will vary for competitive negotiators and value-creating negotiators. Success for competitive negotiators is based on personal gain. Value-creating negotiators define success based on the total value created between both parties to the negotiation.); *see also* KOROBKIN, *supra* note 62, at 246.

⁹⁹ BRESLIN & RUBIN, *supra* note 82, at 247.

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with precision, planning their every move.¹⁰⁰ While all parties should be fully prepared with knowledge of the relevant facts and applicable laws, in order to claim the most value and “win,” the negotiator must be prepared to implement a comprehensive hard bargaining strategy.¹⁰¹ Competitive negotiators can win by claiming the most value through ferocious preparation and precise planning of each action.¹⁰²

The negotiator’s calculated approach to claiming value and maximizing returns can be applied to organizations besieged by the public’s spotlight. While organizations maximize returns like a competitive negotiator, the returns available for organizations in a scandal will not necessarily be the same kind of return that is commonly claimed during a typical negotiation. Organizations can maximize returns in a variety of forms, such as finances, resources, public support, or strengthened relationships. The typical negotiation will usually be a contest over a financial return. Although the type of return may differ, the ways negotiators and organizations attempt to maximize their returns are the same. Organizations follow the competitive negotiator’s example by planning how and when to act. An organization is most effective when its actions are thoughtfully prepared and fully developed.¹⁰³ Organizations can anticipate an opposition’s response by planning and preparing follow-up responses.¹⁰⁴ Preparation bolsters an organization’s confidence and can also lead to a devastating blow to the opposition’s morale.¹⁰⁵

Planned Parenthood prepared as a competitive negotiator to maximize and claim value. After identifying an opportunity to respond to the CMP allegations, the organization released a detailed informational campaign that aimed to correct misinformation. The organization’s campaign explained how the organization was founded, what medical procedures the group performs, who typical Planned Parenthood patients are, where clinics are located, and most importantly, why the organization exists. Once the information, graphics, videos, and press responses were prepared, Planned Parenthood methodically released specific information to specific platforms. As a result of its preparation, the organization knew which platform would reach which audience and what information would be most persuasive to those groups. This preparation and execution positioned Planned Parenthood to claim value from its dispute.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ MNOOKIN ET AL., *supra* note 34, at 254.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Planned Parenthood maximized its returns from the scandal by claiming value financially and strengthening its relationships. Because the successful information campaign was followed by a fundraising campaign, the group raised over \$1 million. This response helped build the organization's "war chest" for future conflicts.¹⁰⁶ With the information carefully selected for public consumption, the public opinion shifted in favor of Planned Parenthood.¹⁰⁷

This was a major victory for the organization because it also strengthened Planned Parenthood's relationship with Congress. The relationship between the two institutions is essential to the organization's funding because the legislature appropriates the government funding necessary to treat Medicaid and Medicare patients.¹⁰⁸ The information campaign maximized Planned Parenthood's returns by raising a significant amount of money and securing the necessary relationships with Congress to move forward after the damaging video scandal.

4. *Present a Strong Defense*

Competitive negotiators control the narrative of the conflict and project confidence by presenting a strong defense against an opposition's tactics and substantive allegations.¹⁰⁹ Competitive negotiators prepare for a negotiation by analyzing the facts, determining each party's interests, and planning how to maximize gains from their bargaining power position.¹¹⁰ Due to this

¹⁰⁶ A war chest is a common term used to describe "money set aside or scheduled for a particular purpose or activity, as for a political cause or an organizational drive." *War Chest*, DICTIONARY.COM, <http://www.dictionary.com/browse/war-chest>.

¹⁰⁷ Rebecca Riffkin, *In U.S., 59% View Planned Parenthood Favorably*, GALLUP (October 14, 2015) <http://www.gallup.com/poll/186188/view-planned-parenthood-favorably.aspx>.

¹⁰⁸ Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD). *What's Medicare*, MEDICARE.GOV, <https://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html> (last visited Mar. 28, 2016). **Medicaid** is a health insurance program for low-income individuals and those with disabilities. Elderly low-income people are eligible for both Medicare and Medicaid. *Medicaid*, HEALTHINSURANCE.ORG, <https://www.healthinsurance.org/glossary/medicaid/> (last visited Mar. 28, 2016). Medicaid covers long-term care, so it can be used to fund nursing home stays for people who are eligible. *Id.*

¹⁰⁹ See generally Murray, *supra* note 97.

¹¹⁰ Phillip H. Gulliver, *Disputes and Negotiations: A Cross Cultural Perspective*, in *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 5 (Charles B. Wiggins & L. Randolph Lowry eds., 2d ed., 1997).

preparation, competitive negotiators operate from an “unbreachable” defensive position.¹¹¹ The defensive position creates aggressive offensive opportunities to persuade, coerce, devise, or manipulate the opponent.¹¹² By forging a strong defense against the opposing party, the negotiator establishes the tone for the negotiation and is positioned for success.

Strong defensive actions that rebut an opposition’s claim allow the competitive negotiator to take control of the process.¹¹³ When in control of the process, negotiators simultaneously control the topic and flow of conversation.¹¹⁴ This is a powerful position for the negotiator to be in because it ensures that their issues and interests will be addressed.¹¹⁵ Additionally, the negotiator can expand or restrict the scope of the discussion, holding the power to flood or choke the conversation at will. With a strong defensive approach, competitive negotiators can gain control of the process and determine whether it will progress towards a resolution.

Bargaining power can be a negotiator’s most powerful strength or greatest weakness.¹¹⁶ Competitive bargaining projects confidence throughout the process, regardless of the negotiator’s initial starting position. This projection of confidence in any circumstance is a psychological ploy used to force the opposition’s hand. While projecting confidence may seem simple, competitive negotiators must be cautious because the strategy does not allow for any adjustments.¹¹⁷ Negotiators that shift from a competitive strategy to a collaborative approach signal weakness to the opposing party.¹¹⁸ Because competitive negotiating is based entirely on strength, any sign of weakness must be avoided.¹¹⁹ A competitive strategy can only be successful if the negotiator perpetually projects strength and confidence.

Organizations that present a strong defense against opposition tactics and accusations can reap the same potential benefits seen in a negotiation. By implementing this competitive negotiation technique, organizations battling scandalous accusations control the media narrative and project strength to the public.

¹¹¹ *Id.*

¹¹² *Id.* at 6.

¹¹³ See generally JOSEPH B. STULBERG, *TAKING CHARGE/MANAGING Conflict* (2nd ed., 2001).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Russell Korobkin, *A Positive Theory of Legal Negotiation*, in *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 18 (Charles B. Wiggins & L. Randolph Lowry eds., 2d ed., 1997).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Planned Parenthood strongly defended against the anti-choice groups' attacks. The organization used surrogates to respond to reporters and commentators that broadcasted false information and moved swiftly to reject and discredit the CMP videos. Using a coordinated media blitz, Planned Parenthood's strong defensive approach created the opportunity to proceed with a more aggressive offensive attack.

Rebutting the accusations online, Planned Parenthood retook the social media narrative through an aggressive Twitter campaign.¹²⁰ Using the hashtag #StandwithPP, users of all ages, races, religions, and genders shared their personal experiences with the healthcare organization.¹²¹ The internet was flooded with positive experiences and concrete examples of the group's positive impact. The hashtag trended worldwide and became a rallying cry for the organization's online supporters.¹²² Planned Parenthood aggressively retook control of the media narrative by changing the focus of the conversation from the CMP videos and criminal charges to the medical services the organization provides.

Organizations can project strength through their leadership by following Planned Parenthood's President and CEO's example. Cecile Richards has never been afraid of a fight.¹²³ She has been preparing for this kind of battle since her tenure began in 2006.¹²⁴ In a move towards political activism, Richards strengthened Planned Parenthood's political influence by expanding its political fundraising capabilities and consistently increasing its spending during election seasons.¹²⁵ Richards has defended this activity because she believed it has made the organization a better healthcare provider.¹²⁶ "We are a better at our work because we're a movement that advocates and pushes

¹²⁰ Tweet engagement campaigns allow groups to extend the reach of their content to a relevant audience on Twitter. Groups can promote Tweets that are published organically or choose to create Tweets that are only promoted to the audiences they target. *Create a Tweet Engagement Campaign*, TWITTER, <https://business.twitter.com/en/help/campaign-setup/create-a-tweet-engagement-campaign.html>.

¹²¹ A hashtag is a word or phrase preceded by a hash mark (#) used within a message on social media to identify a keyword or topic of interest and facilitate a search for it. *Hashtag*, DICTIONARY.COM, <http://www.dictionary.com/browse/hashtag?s=t>.

¹²² A trend, or trending, on Twitter refers to a hashtag-driven topic that is immediately popular at a particular time. *What Do Twitter Trends Mean?*, HASHTAGS.ORG, <https://www.hashtags.org/featured/what-do-twitter-trends-mean/>.

¹²³ Rachel M. Cohen, *Cecile Richards: Grace Under Fire at Planned Parenthood*, THE PROSPECT (December 17, 2015) <http://prospect.org/article/cecile-richards-grace-under-fire-planned-parenthood>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

forward,” Richard explained in an interview. “We have real experiences everyday with folks coming in and asking for care.”¹²⁷ Her leadership continues to project the organization’s strength to the American people.

Stemming from its strong defense against the CMP’s videos, Planned Parenthood cultivated support around the country. Because the organization fought the accusations on merit rather than engaging in personal insults, the support from public officials, celebrities, and other organizations grew exponentially. NARAL, the National Association for the Right of Abortion Laws, was the first organization to publicly voice support for Planned Parenthood.¹²⁸ The pro-choice political action committees shared membership lists and contact information to mobilize support and increase fundraising potential. Hillary Rodham Clinton led the wave of Democratic support for Planned Parenthood during her Presidential campaign, speaking out in defense of the organization during the first Democratic National Convention debate.¹²⁹ Following her lead, the four other male candidates running for the Democratic nomination echoed her sentiment. Celebrities like Beyoncé, Chelsea Handler, Katy Perry, John Legend, Amy Poehler, Kerry Washington, and many more showed solidarity with Planned Parenthood through donations and social media advocacy.¹³⁰ The support for Planned Parenthood grew from everyday citizens as well. Social media users made their profile pictures pink to stand with Planned Parenthood.¹³¹ As social media turned pink and public officials pledged to defend the healthcare provider, Planned Parenthood reaped the benefits of presenting a strong defense.

¹²⁷ *Id.*

¹²⁸ NARAL is one of the largest “pro-choice” political action groups in the United States. NARAL acts purely as a political advocacy group compared to Planned Parenthood that provides medical services and has a political arm. NARAL and Planned Parenthood often work together to expand abortion access.

¹²⁹ Samantha Lachman, *Hillary Clinton Was the Debate’s First—and Last—Candidate to Bring Up Planned Parenthood*, HUFFINGTON POST (Oct. 13, 2015), http://www.huffingtonpost.com/entry/hillary-clinton-planned-parenthood_us_561dc616e4b0c5a1ce611273.

¹³⁰ *Top 10 Most Outspoken Celebrities Who Support Planned Parenthood*, THE HOLLYWOOD REPORTER (Aug. 23, 2015 7:40 AM), <http://www.hollywoodreporter.com/news/celebrities-support-planned-parenthood-top-816610>.

¹³¹ Supporters were urged to change their profiles pictures on social networking to include a pink filter. The hashtag #StandwithPP was trending on both Twitter and Facebook as users shared their personal stories from their visits to the health clinics as well as why they supported the organization.

B. COLLABORATIVE COMPONENT: MEDIATION

The public's trust is easy to lose and hard to earn back. When a group finds itself under the harsh public spotlight, it is vulnerable to the public's fickle opinion. The organization's mission when combatting a scandal is to restore trust.¹³² The public evaluates leadership, competency, and accountability to determine how trustworthy an organization is. When an organization demonstrates leadership, acts competently, or is accountable to the community, the public's trust in the organization grows. Organizations battling a public scandal can regain the public's trust by embracing these three characteristics.

The *Collaborative Component* of the proposed public relations strategy is responsible for regaining the public's trust and restoring the organization's brand. By incorporating characteristics and techniques displayed during mediations, organizations will successfully demonstrate to the public that they are leaders, they are competent, and they are accountable. To implement the *Collaborative Component*, organizations must: 1) emulate a mediator's accommodating demeanor and 2) apply a mediator's skill set to the facts of the scandal. Cecile Richards exemplified how organizations should implement the *Collaborative Component* during her excruciating nine-hour long Congressional hearing. Through her stunning display of leadership, competency, and accountability, she earned the public's trust. Her performance in the face of unrelenting criticism and absurd allegations is an example of the two elements necessary to implement this component and how mediation applies to an organization's public relations response. Organizations that successfully implement the *Collaborative Component* will be able to earn back the public's trust.

1. *Emulate a Mediator's Personality*

Not all mediators share the same personality traits.¹³³ Despite diversity in personalities, there are three traits that are commonly identified in trained mediators.¹³⁴ A trained mediator is: 1) steady and controlled, 2) perceptive and competent, and 3) an active and skilled listener. Organizations must emulate these three traits to restore the public's trust.

¹³² See generally LEHANE ET AL., *supra* note 27.

¹³³ See generally STULBERG, *supra* note 113.

¹³⁴ GOLDBERG ET AL., *supra* note 28 at 108.

a. *Steady and Controlled*

Successful mediators have steady temperaments and controlled demeanors.¹³⁵ These characteristics can be extremely advantageous when facilitating a stressful situation. With emotional parties under stress, the mediator's controlled demeanor calms the situation and allows for the parties to continue participating.¹³⁶ Depending on the dispute, some mediations involve reflective settings that require the parties to proceed slowly.¹³⁷ When a mediation environment requires patience and understanding, it becomes very clear why it is important for a mediator to have a steady and controlled demeanor. Without the ability to be in control of his or her emotions, a mediator could not foster the necessary environment, which would harm the chance for an agreement.¹³⁸ A steady temperament and a controlled demeanor are essential traits for successful mediators.

A mediator's calm demeanor allows for the assertion of authority when necessary.¹³⁹ Whether the mediator intervenes to end a party's use of hateful speech or the mediator believes that a caucus is necessary,¹⁴⁰ his or her controlled demeanor projects confidence during those uncertain times.¹⁴¹ Mediators must be comfortable with the uncomfortable if they hope to assist parties in reaching resolutions.¹⁴² A steady temperament allows for this level of comfort and is a demonstration of leadership. After recognizing that the mediator has leadership skills and a steady temperament, the parties are more likely to trust the mediation process.¹⁴³

Organizations facing heightened public scrutiny need to have a steady temperament and a controlled demeanor. Similar to facilitating a stressful mediation, organizations must be in control in order to avoid an emotional response. When an organization successfully avoids exacerbating a public relations crisis, its behavior projects a reliable temperament to the public. This projects confidence to the public that the organization is in control of the scandal and the public will view the organization as a leader capable of handling unsuspected issues. By emulating a mediator's demeanor and being

¹³⁵ MEDIATION: APPROACHES AND INSIGHTS 3 (Russ Bleemer ed., 2005).

¹³⁶ *Id.* at 6.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ CARRIE J. MENKEL-MEADOW, LELA P. LOVE, JEAN R. STERNLIGHT & ANDREA K. SCHNEIDER, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 355 (2d ed., 2010).

¹⁴¹ MEDIATION, *supra* note 135, at 6.

¹⁴² *Id.*

¹⁴³ STULBERG, *supra* note 113, at 38.

comfortable with the uncomfortable, organizations project confidence and the public views them as leaders in the community.

b. Perceptive and Competent

The parties' reluctance to share information or emotions can be a major barrier to reaching an agreement in mediation.¹⁴⁴ Even after sharing all the facts, parties are often unwilling to express their feelings or their genuine reactions.¹⁴⁵ Perceptive mediators help neutralize this challenge by recognizing nonverbal communications or dormant emotions under the surface and maneuvering parties toward a mutually beneficial agreement.¹⁴⁶

A mediator's perception of a situation or a party is not always enough to ensure a resolution. Without an understanding of the complex fact pattern or a general knowledge of proper decorum, a perceptive mediator is useless.¹⁴⁷ Mediators must be both competent and perceptive to ensure that the fundamental details of a dispute are not overlooked.¹⁴⁸ When a mediator has a solid comprehension of the disputed events, it demonstrates to the parties that the mediator has a genuine interest in helping reach a resolution. The mediator's understanding of the dispute makes the parties feel more comfortable with the process.¹⁴⁹ This comfort often evolves into an appreciation for the mediator's dedication, skill set, and level of competency.¹⁵⁰ When parties feel comfortable and believe that the mediator is competent, trust is built between the participants.¹⁵¹

Organizations attempting to regain the public's trust must first prove to be perceptive and competent. With a comprehensive understanding of its public relations crisis, coupled with the ability to perceive the nation's mood, an organization can begin to make the public feel more comfortable. The public can be analogized to a party in mediation because they appreciate perceptive and competent organizations. The public will not and cannot realistically express every piece of information or feeling that the organization may want to know. Organizations must be perceptive in order to determine the public's genuine attitude while simultaneously working to make the public feel more comfortable. By displaying a depth of knowledge and a firm understanding of

¹⁴⁴ MNOOKIN ET AL., *supra* note 34, at 128.

¹⁴⁵ MEDIATION, *supra* note 135, at 4.

¹⁴⁶ *Id.* at 5.

¹⁴⁷ *Id.* at 6.

¹⁴⁸ STULBERG, *supra* note 113, at 37.

¹⁴⁹ *Id.* at 5.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

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the allegations, organizations can convey to the public that they have a genuine interest in resolving the public relations crisis for everyone's benefit. These traits demonstrate that the group accepts that the scandal happened, understands what is currently happening with the scandal, and is competent to prevent another scandal. The public feels comfortable with organizations that are competent and comprehend unfolding events. Due to the organization's competence and the public growing more comfortable, Planned Parenthood regained some of the trust lost after the videos' release.

c. Active and Skilled Listener

Listening is a fundamental aspect of alternative dispute resolution.¹⁵² Mediators are known to be fabulous listeners with a genuine interest in learning about a party's concerns.¹⁵³ Mediation places a significant value on active listening skills because the skills demonstrate to the parties that their concerns are recognized and acknowledged.¹⁵⁴ While some mediators may have been born good listeners, mediator trainings devote significant time to assist others that need to further develop this essential trait.¹⁵⁵ A person can improve their listening skills with practice and experience.¹⁵⁶ By continuing to train and enhance certain personality traits, mediators become better listeners and facilitators in the process.

In order to convey to parties that their concerns are heard and are valued, mediators practice active listening.¹⁵⁷ Also known as empathetic listening, this type of listening focuses on the speaker's central message and the feelings conveyed through the communication.¹⁵⁸ Active listening is a distinct way of listening.¹⁵⁹ The listener is instructed to rephrase the speaker's remarks to indicate that they were heard and are valued.¹⁶⁰ Because of the mediator's active listening, parties realize that the mediator is actually listening and acknowledging what is being said. Since parties place significant value on

¹⁵² FISHER ET AL., *supra* note 52, at 36.

¹⁵³ MEDIATION, *supra* note 135, at 4.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; see generally ERIC GALTON, *MEDIATION: A TEXAS PRACTICE GUIDE* (Tracie McFadden Burns ed., 1993).

¹⁵⁶ Valerie McNaughton, *Active Listening: Applying Mediation Skills in the Courtroom* 38(2) JUDGES' J. 23 (Spring 1999).

¹⁵⁷ *Id.*

¹⁵⁸ John Barkai, *Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil*, 75 NEB. L. REV. 704, 737 (1996).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

having their concerns be heard, active listening builds on the trust between the parties involved in mediation.¹⁶¹

Active listening is a practical way for an organization to demonstrate that it values the public's concerns. The public believes that organizations that practice active listening are authentic.¹⁶² This authenticity stems from the belief that the organization has a genuine desire to learn from its past mistakes and correct the harm its scandal inflicted. Active listening provides organizations with the unique opportunity to empathize with the public's concern.¹⁶³ Many view an organization's implementation of active listening as a selfless act. This ultimately strengthens the relationship between the public and the organization because the organization is perceived to be accountable.

2. *Apply a Mediator's Skills*

After embracing a mediator's traits, organizations must then apply their skills. Trained mediators have a wide arsenal of techniques, strategies, and skills at their disposal.¹⁶⁴ Mediators select from those choices depending on the conflict because some disputes will require a certain skill set, regardless of the situational variables of the mediation.¹⁶⁵ To properly execute the second phase of the *Collaborative Component*, organizations must: 1) Respond Forcefully and Persuasively, 2) Focus the Direction of the Discussion, and 3) Avoid Assigning Blame.

a. *Respond Forcefully and Persuasively*

When mediators are respected by the parties, they are more likely to be successful in facilitating a resolution.¹⁶⁶ Mediation training equips mediators with techniques to earn the parties' respect.¹⁶⁷ Mediators can respond to parties forcefully and persuasively to establish authority.¹⁶⁸ This response technique allows mediators to successfully facilitate the mediation and for parties to respect the mediator as a leader. Parties do not want a mediator that merely

¹⁶¹ See generally McNaughton, *supra* note 156.

¹⁶² See generally LEHANE ET AL., *supra* note 27.

¹⁶³ *Id.*

¹⁶⁴ GOLDBERG ET AL., *supra* note 28 at 108.

¹⁶⁵ *Id.*

¹⁶⁶ AMERICAN BAR ASSOCIATION, THE PRACTICE SKILL TOOLKIT: TIPS ON ADR, DISCOVERY, AND ETHICS 19 (2014).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

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accepts a claim as fact and proceeds to urge each side to agree.¹⁶⁹ Mediators use this skill to get the parties to the table, to establish the parameters of the mediation, and to ensure that the parties act rationally.¹⁷⁰

Before the mediation can begin, the mediator must get the parties to agree to mediate.¹⁷¹ Forceful and persuasive responses can influence a party's decision to commit to a dispute resolution process. Mediators are also tasked with ensuring parties are negotiating within realistic parameters.¹⁷² The mediator must be forceful and persuasive when informing a party that a proposal is simply not feasible.¹⁷³

Finally, and most importantly, mediators must be forceful and persuasive when urging the parties to act rationally and reasonably.¹⁷⁴ Without force or persuasion, irrational actors will not listen to the mediator or the other party, causing the entire process to be futile. By responding in a forceful and persuasive manner, mediators earn respect and establish themselves as the leader of the alternative dispute resolution process.

Leaders are respected by the community. In order for an organization facing a scandal to be viewed as a leader again, it must earn the public's respect. Organizations can begin to earn that respect by implementing a mediator's response technique. A forceful and persuasive response commands respect. When addressing public concerns, organizations must be forceful and persuasive; refuting allegations, correcting the record, and answering the public's questions are common situations that require an organization to display leadership through forceful and persuasive responses. A forceful and persuasive response when refuting allegations can squash a new scandal before it gains media attention. When correcting the record, forceful and persuasive responses show that the organization is confident in the truth. Finally, the most important time an organization must be forceful and persuasive is when answering the public's questions. An organization's answer has the potential to satisfy the individual and helps to regain the public's trust. If the organization's response is not convincing, the inadequate response can escalate the crisis. Forceful and persuasive responses demonstrate to the public that the situation is under control, which can be instrumental in gaining back the public's trust.

¹⁶⁹ STULBERG, *supra* note 113, at 38.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 31.

¹⁷² *Id.* at 34.

¹⁷³ *Id.*

¹⁷⁴ *See generally* STULBERG, *supra* note 113.

b. Focus the Direction of the Discussion

The mediator is often described as the chairperson of the mediation.¹⁷⁵ They are responsible for focusing the conversation and maintaining a productive environment.¹⁷⁶ The mediator is the “one who guides.”¹⁷⁷ Mediators are trained to reframe the conversation when discussion becomes harmful or unproductive to the overall process.¹⁷⁸ Conversations are considered harmful when personal attacks are used or when the mediator believes any further discussion of the topic would result in an impasse.¹⁷⁹ Unproductive conversations require the mediator to intervene when side conversations divert attention from the primary issue or when parties dwell in the past rather than focusing on the future.¹⁸⁰ A mediator helps the parties shape their future, not re-litigate their past, by reframing the discussion in order to avoid past memories from paralyzing potential future success.¹⁸¹ The emphasis is not on ignoring the past, but ensuring that parties do not become prisoners of it.¹⁸² Unlike competitive negotiators, mediators steer the conversation and will only intervene when necessary to ensure that productive discourse can continue. Negotiators that control the narrative attempt to control what is said, while mediators only reframe what the parties say to help facilitate agreement.¹⁸³ Although the extent to which this applies will vary depending on the dispute, a mediator will always refocus the discussion when facilitating a mediation.¹⁸⁴

When the public discussion regarding an organization’s scandal is harmful or unproductive, the group can apply the mediation skill to refocus the conversation by directing the conversation towards resolution. Unproductive discussions for organizations consist of irrelevant issues, issues that are out of the organization’s control, and minor concerns that distract the organization’s responses from its primary crisis. While harmful conversations are widespread during a public relations crisis, organizations must be extremely selective when intervening. Refocusing the discussion can be more work than what the

¹⁷⁵ *Id.* at 31.

¹⁷⁶ *Id.*

¹⁷⁷ JAMES J. ALFINI, SHARON B. PRESS, JEAN R. STERNLIGHT & JOSEPH B. STULBERG, *MEDIATION THEORY AND PRACTICE* 186 (2001).

¹⁷⁸ CHRISTINA M. SABEE, *MEDIATION: TRANSFORMING CONFLICT THROUGH COMMUNICATION* 75 (2013).

¹⁷⁹ *Id.*

¹⁸⁰ J.W. ZEIGLER, JR., *THE MEDIATION KIT: TOOLS TO SOLVE DISPUTES* 13 (1997).

¹⁸¹ STULBERG, *supra* note 113, at 101.

¹⁸² *Id.*

¹⁸³ ALFINI ET AL., *supra* note 177, at 76.

¹⁸⁴ STULBERG, *supra* note 113, at 31.

potential reward is worth. Because of the 24-hour news cycle, the public discussion is constantly shifting. Due to this inconsistency, organizations should only attempt to refocus the conversation during specific situations or when it is absolutely required. The optimal time for organizations to utilize this mediator skill is during media interviews or when the organization has access to a large audience. Organizations should apply discretion when choosing to attempt to guide the public conversation.

There is an important distinction between organizations refocusing the discussion in the *Collaborative Component* and organizations controlling the narrative in the *Combative Component*. While controlling the narrative is extremely beneficial when combating allegations, this aggressive tactic does not help restore trust. Instead, when implementing the *Collaborative Component*, organizations must shift from controlling the narrative to allowing the public to voice its concerns and only intervene when absolutely necessary. Organizations can refocus the discussion to highlight certain issues to illustrate that it empathizes with the public's concern. This mediator skill helps regain trust because organizations demonstrate a comprehensive understanding of what the public is most concerned about now.

c. Avoid Assigning Blame

Dispute resolution processes do not determine fault.¹⁸⁵ Mediation is a structured, assisted process that attempts to resolve disputes, not determine winners and losers.¹⁸⁶ With the emphasis on achieving a permanent ceasefire between the parties, the mediator does not assign blame.¹⁸⁷ A mediator has no personal preference regarding how the dispute should be resolved one way or the other.¹⁸⁸ While the mediator remains neutral and avoids assigning blame, the parties accept responsibility for their actions by simply coming to the table. By encouraging participation and by reaching a resolution, parties are able to move past the dispute, without having to determine fault. After reaching an agreement, parties are more likely to change their future behavior because they do not feel like they were attacked or needed to be defensive about their past actions.¹⁸⁹ Without the mediator assigning blame, the parties are far more likely to reach a resolution.¹⁹⁰

¹⁸⁵ ZEIGLER, *supra* note 180, at 13.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ STULBERG, *supra* note 113, at 37.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

Although this may be the most difficult for an organization to follow, organizations must avoid assigning blame during a public scandal. Analogous to mediation, public relation scandals rarely result in one-sided victories.¹⁹¹ While invested parties may “win” some aspects of a scandal, no one comes out unscathed.¹⁹² Knowing this, organizations should work towards a resolution rather than revenge. Not only will revenge prolong the media’s attention on the scandal, but the public will view this as the organization’s inability to hold itself accountable. If an organization refrains from assigning blame, the public sees it as responsible and willing to learn from its experience. Focusing on moving forward, organizations avoid additional contentious fighting and instead begin rebuilding the public’s trust. By refusing to assign blame and choosing instead to positively advocate for itself, the organization demonstrates that the public can trust it to do the right thing in the future.

3. *Cecile Richards: Planned Parenthood’s Mediator*

Cecile Richards’ Congressional testimony is the personification of the *Collaborative Component* because she demonstrated: 1) leadership, 2) competency, and 3) accountability. Planned Parenthood’s CEO and President illustrated how mimicking a mediator’s personality and skill set can regain the public’s trust after a notorious scandal.

a. *Leadership*

Leadership is essential when an organization is attempting to regain the public’s trust.¹⁹³ Cecile Richards personified leadership during her Congressional testimony by responding forcefully and persuasively and maintaining a steady and controlled composure. Cecile Richards remained composed and in control throughout her nine hours of testimony, spanning from ten o’clock in the morning to seven o’clock at night.¹⁹⁴ As “Republicans railed against the organization,”¹⁹⁵ Richards’ performance was praised as a

¹⁹¹ See generally ZEIGLER, *supra* note 180.

¹⁹² *Id.*

¹⁹³ See generally LEHANE ETAL., *supra* note 27.

¹⁹⁴ Amanda Terkel & Ryan Grim, *Cecile Richards’ Testimony is a Model for Hillary Clinton*, THE HUFFINGTON POST (October 16, 2016), http://www.huffingtonpost.com/entry/hillary-clinton-benghazi-committee-cecile-richards_us_56213066e4b08d94253eface.

¹⁹⁵ *Planned Parenthood’s Cecile Richards testifies before Congress*, CBS NEWS (Sept. 29, 2015), <http://www.cbsnews.com/news/planned-parenthoods-president-on-the-offensive/>.

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“model” for others to emulate.¹⁹⁶ The interruptions, personal critiques, and intimidating threats could not rattle Richards’ mediator-like demeanor. The Republican Committee members interrupted Richards forty-four times during the hearing.¹⁹⁷ The interruption began during the first line of questions from Chairman Chaffetz. The Congressional transcript reads:

Chaffetz: “Does any of the [federal] funds go to the Democratic Republic of Congo?”

Richards: “Congressmen, let me...”

Chaffetz: “No, no, no. We don’t have time for a narrative.”¹⁹⁸

The CEO had no time to answer the question before she was rudely interrupted. This deplorable behavior continued throughout the day. Representative Connolly began his allotted time by scolding his colleagues’ behavior. Speaking to Richards, Connolly stated, “My colleagues say there is no war on women—but look how you have been treated as a witness. Intimidated. Talked over. Interrupted. Cut off. Criticized because of salary.” The Congressman turned to his colleagues and exclaimed, “How dare you? Who do you think you are?”¹⁹⁹ The Committee continued to speak over her, bombarding her with questions that she did not have adequate time to answer.²⁰⁰ The exchange, if it can even be described as that, between Congresswoman Lummis and Richards illustrates this frustrating reoccurring trend:

Lummis: “Why do you need federal funding? You’re making a ton of dough.”

¹⁹⁶ Terkel & Grim, *supra* note 194.

¹⁹⁷ Alicia Lu, *Cecile Richards Was Interrupted By A Republican 44 Times During the Planned Parenthood Congressional Hearing*, BUSTLE (Sept. 30, 2015), <https://www.bustle.com/articles/114078-cecile-richards-was-interrupted-by-a-republican-44-times-during-the-planned-parenthood-congressional-hearing>; Sam Reichman & Jessica Winter, *Every Single Time a Republican Interrupted the President of Planned Parenthood*, SLATE (Sept. 29, 2015), http://www.slate.com/blogs/xx_factor/2015/09/29/house_committee_hearing_on_planned_parenthood_every_single_time_a_republican.html.

¹⁹⁸ *Planned Parenthood Funding*, C-SPAN (Sept. 29, 2015), <https://www.c-span.org/video/?328410-1/planned-parenthood-president-cecile-richards-testimony-taxpayer-funding&start=16522>.

¹⁹⁹ *Id.*

²⁰⁰ Reichman & Winter, *supra* note 197.

- Richards: “We don’t make any profit off of federal money. If I could just have a moment to explain...”
- Lummis: “[The money] could go to 13,000 other clinics. My time is up. I yield.”²⁰¹

While many men in politics complain about being interrupted or not having adequate time to respond,²⁰² Richards allowed the interruptions to continue and ultimately looked like the only adult in a room full of petulant children.

“Planned Parenthood doesn’t need federal subsidies; just look at her salary,” Chairman Chaffetz mocked during his opening statement.²⁰³ When the Chairman questioned Richards, he voiced an issue with her compensation.²⁰⁴ The line of questioning was condescending and disturbing to many viewers, both inside and outside of the Rayburn building.²⁰⁵ Congresswoman Maloney opened her remarks with a strong condemnation of the Committee and the Chairman’s behavior.²⁰⁶ She seethed to the Committee, “In my entire time I’ve been in Congress, I’ve never seen a witness beaten up and questioned about their salary. I would like to register my opposition and

²⁰¹ *Planned Parenthood Funding*, *supra* note 198.

²⁰² See generally Hrafnkell Haraldsson, *Trump, Who Repeatedly Interrupted Clinton, Complains About Kaine’s Interruption*, POLITICUS USA (Oct. 5, 2016), <http://www.politicususa.com/2016/10/05/trump-repeatedly-interrupted-clinton-complains-kaines-interruptions.html>; Mark Hensch, *Webb: CNN ‘rigged’ Dem Debate for Clinton, Sanders*, THE HILL (OCT. 16, 2015), <http://thehill.com/blogs/ballot-box/presidential-races/257154-webb-cnn-rigged-dem-debate-for-clinton-sanders>; Nolan D. Mccaskill, *Sanders on ‘Excuse me, I’m talking’: Clinton Interrupted Me*, POLITICO (Mar. 7, 2016), <http://www.politico.com/blogs/2016-dem-primary-live-updates-and-results/2016/03/bernie-sanders-excuseme-interruption-220397>; Allee Manning & Leon Markowitz, *Who Is the Worst Interruptor at the Democratic Debates?*, VOCATIV (Mar. 10, 2016), <http://www.vocativ.com/295404/wait-your-turn-bern/>; Janell Ross, *What Bernie Sanders still doesn’t get about interrupting Hillary Clinton*, CHICAGO TRIBUNE (Mar. 7, 2016, 4:21 pm), <http://www.chicagotribune.com/news/opinion/commentary/ct-bernie-sanders-interrupts-hillary-clinton-sexism-20160307-story.html>; Cooper Allen, *Ben Carson: ‘Can Somebody Attack Me Please?’*, USA TODAY (Feb. 25, 2016), <http://www.usatoday.com/story/news/politics/onpolitics/2016/02/25/ben-carson-houston-debate/80964922/>; Tessa Berenson, *Ben Carson Lost the Debate but Won the Internet*, TIME (Feb. 25, 2016), <http://time.com/4238346/ben-carson-republican-debate-fruit-salad/>.

²⁰³ *Planned Parenthood Funding*, *supra* note 198.

²⁰⁴ Amber Phillips, *5 Moments When Congress’s Planned Parenthood Hearing Got Heated*, THE WASHINGTON POST (Sept. 29, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/09/29/the-5-most-contentious-exchanges-from-congress-planned-parenthood-hearing/>.

²⁰⁵ *Id.*; Lu, *supra* note 197.

²⁰⁶ *Planned Parenthood Funding*, *supra* note 198.

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objection to the Chairman beating up a woman, on our witness today, for making a good salary.”²⁰⁷

The Congresswoman’s strong scolding resonated with many women—and men—across the country who found it ridiculous for the Committee to criticize a woman for her salary. Other Committee members characterized their colleagues’ behavior as misogynistic and criticized the “offensive approach” taken by some Republicans.²⁰⁸ With support from the Democratic Committee members and much of the public, Richards never discussed her salary. Instead, Richards proved again to be a steady and controlled leader by simply answering the questions and pivoting to talking points regarding Planned Parenthood services or patients.

“You are currently being investigated by four committees of the United States Congress and the Speaker of the House of Representatives wants to establish a standing committee for future investigations,” Representative Eleanor Holmes Norton explained, as she described the intimidation and threats that Planned Parenthood faced.²⁰⁹ The Republican Committee members berated Richards; one member compared her to a criminal. Representative Duncan closed his time with an accusation towards Richards, claiming, “Your apology [for the videos] reminds me of what criminals do.”²¹⁰ The threat of “defunding” loomed throughout the hearing and became a topic for discussion. Following the hearing, the Committee released a report that continued with threats and adopted the official position that “Planned Parenthood does not need federal funding.”²¹¹

Richards embodied grace under fire. She never lost her temper or lashed out against a Committee member. Even when compared to a criminal, Richards politely responded by saying, “I respectfully disagree.”²¹² Rather than giving into the fear of their threats, Richards displayed tremendous courage and leadership by rising above with her controlled demeanor.

“No.” Richards simply responded to one of Representative Duncan’s questions.²¹³ Her tone condensed “hours of polite defiance” and patience into a single syllable.²¹⁴ Similar to a mediation, the stakes were high during the

²⁰⁷ *Id.*; Phillips, *supra* note 204.

²⁰⁸ Phillips, *supra* note 204.

²⁰⁹ *Planned Parenthood Funding*, *supra* note 198.

²¹⁰ *Id.*; Phillips, *supra* note 204.

²¹¹ Phillips, *supra* note 204.

²¹² *Id.*

²¹³ Amy Davidson, *Cecile Richards: The Target at the Planned Parenthood Hearings*, THE NEW YORKER (Sept. 30, 2015), <http://www.newyorker.com/news/amy-davidson/cecile-richards-the-target-at-the-planned-parenthood-hearings>.

²¹⁴ *Id.*

hearing and Richards's forceful and persuasive responses were critical to gain public support for Planned Parenthood.

During Chairman Chaffetz's questioning, he displayed a chart to illustrate the alleged correlation between the decrease in the number of breast exams performed at Planned Parenthood clinics and the increase in the number of abortions the clinics performed. Richards refused to accept the chart as factual. "You're going to deny these numbers?"²¹⁵ Chaffetz quipped back at Richards. "I'm going to deny the slide you showed me that no one provided us with before. We provided you all the information about the services Planned Parenthood provides. It doesn't feel like we're trying to get the truth," Richards explained to the Chairman.²¹⁶ Chaffetz began to respond by saying "I pulled this from your..." but before he could finish his claim, Richards forcefully shut it down.²¹⁷ "The source is actually Americans United for Life, which is an anti-abortion group. So I would check your source."²¹⁸ Chaffetz stuttered and said that they would "get to the bottom of the truth of that." With the forceful rejection of Chaffetz's false claim, Richards cast doubt on the Chairman and his allegations. By refusing to back down, Richards was forceful; by correcting the record and explaining the facts, Richards was persuasive. Her performance, bolstered by her forceful and persuasive responses, earned the organization and Planned Parenthood's CEO much-deserved respect.

b. *Competence*

The public does not trust incompetent organizations or individuals. Organizations that are perceptive, have knowledge of the situation, and can navigate the public discourse of that situation are highly respected. Regardless of political ideology or moral views on abortion, the public agreed that Cecile Richards shone inside the Rayburn House office room and proved to be extremely competent.

Witnesses to Committee hearings must be prepared and have a working understanding of the Congressional inquiry if they want to avoid looking incompetent. In Planned Parenthood's situation, Cecile Richards needed to do more than simply avoid further embarrassment—she needed a "win" for her organization. Richards demonstrated to viewers that she had a comprehensive understanding of the video scandal and perceptively distinguished the Committee members' true intentions motivating each question. Richards had

²¹⁵ Phillips, *supra* note 204.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

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a “command of the information” and provided “specific factual data” regarding the organization and the edited videos.²¹⁹ Richards perceived this as a subtle critique of her answers and responded with a simple reminder, “I am here voluntarily. [Planned Parenthood] has provided tens of thousands of pages of documents to you.”²²⁰ This flustered the lawmakers who attempted to criticize the CEO.

Not only was Richards sharp and perceptive throughout her testimony, but her attention to detail reinforced the public’s belief in her ability to fully understand the complexities of the scandal. Richards recognized the citation in the corner of Chaffetz’s chart and was able to cast aspersions on the information, displaying how uninformed Chaffetz was about his own argument. Because of her perceptive nature, stringent preparation, and extensive knowledge, the public was confident in Richards’ competence to lead.

Richards’ prepared opening statement showed the potential successes of reframing the conversation.²²¹ Richards strategically reframed her testimony and continued to rephrase the questions throughout the day. The first four minutes and twenty-seven seconds of her allotted five minutes focused on Planned Parenthood’s positive impact through the services provided and the patients treated. The remaining thirty-three seconds vehemently rejected the allegations stemming from the release of the videos. The breakdown of the time clearly indicated that Planned Parenthood planned to discuss its mission and services rather than allow extended discussion of a harmful or unproductive topic. Richards also penned an article that was published in conjunction with her testimony.²²² The article focused on the organization and the mission of the Planned Parenthood organization. This concentrated media plan directly addressed the video scandal but successfully pivoted into more favorable topics without ignoring the public’s primary concern.

Richards also successfully reframed the discussion through her testimony. The hearing provided a deeper understanding and a more cohesive view of Planned Parenthood as an organization. With help from Representative Norton, the discussion shifted from the videos to Medicaid patients. The

²¹⁹ Terkel & Grim, *supra* note 194.

²²⁰ Phillips, *supra* note 204.

²²¹ *Planned Parenthood’s Taxpayer Funding Before the House Committee on Oversight and Government Reform* (Sept. 29, 2015) (statement of Cecile Richards, President, Planned Parenthood Federation of America), available at <https://oversight.house.gov/wp-content/uploads/2015/09/Richards-PPFA-Statement-9-29-Planned-Parenthood.pdf>.

²²² Cecile Richards, *Today, We Fight Back*, THE HUFFINGTON POST: THE BLOG (Sept. 28, 2015), http://www.huffingtonpost.com/cecile-richards/today-we-fight-back_b_8211066.html.

Congresswoman praised Richards by saying, “I want to thank you for the Medicaid funds you do receive. The fact that they are Medicaid funds makes a statement of who you are serving. You are serving low income women in my community and across the country. I want to thank you for that.”²²³ Media outlets shared the statistics Richards provided, shifting the conversation from the release of the videos to the patients that Planned Parenthood serves.²²⁴ Similar to a successful mediator, Richards was able to expand and redirect the public discussion about Planned Parenthood in a positive direction by articulating the many aspects of the organization as a healthcare provider.

c. *Accountability*

The public values the ability to admit fault and accept responsibility. While organizations facing communication crises may not be at fault, it is imperative that the group conveys understanding and is viewed as responsible. Mediators who skillfully listen and avoid placing blame help parties move forward and encourage them to alter future behavior. Cecile Richards demonstrated accountability during her testimony as she actively listened to concerns and avoided blaming other organizations. By demonstrating that the organization is responsible and accountable, the public’s trust for the organization grows.

Nodding her head or furrowing her brow were the principal responses from Richards during the Congressional hearing. Although the GOP Congressmen made it difficult for her to do anything differently, Richards listened more than she talked at her own hearing.²²⁵ This benefitted Richards because she displayed active listening by hearing the concerns voiced by the Committee and then attempted to properly address those concerns. A major concern of the public and the Committee was the apology Richards issued immediately following the first release of the videos. The Committee inquired as to why Richards would apologize for the videos if they were edited as

²²³ Phillips, *supra* note 204.

²²⁴ Lu, *supra* note 197; LoBianco, *supra* note 7. *See generally* *Planned Parenthood’s Cecile Richards Testifies Before Congress*, CBS NEWS/ASSOCIATED PRESS (Sept. 29, 2015), <http://www.cbsnews.com/news/planned-parenhoods-president-on-the-offensive/>; Paul Singer, *Planned Parenthood’s Cecile Richards Mounts Defense Before Congress*, USA TODAY (Sept. 29, 2015), <http://www.usatoday.com/story/news/politics/2015/09/29/planned-parenhoods-cecile-richards-mounts-defense-before-congress/73020086/>.

²²⁵ Lu, *supra* note 197.

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Planned Parenthood claimed.²²⁶ Representative Jordan addressed this concern in his line of questioning:

Jordan: “Why did you apologize?”

Richards: “It was bad judgement in my opinion to have a clinical discussion in a non-confidential, nonclinical setting.”²²⁷

Displaying her active listening skills, Richards provided a detailed answer that satisfied many viewers. Representative Jordan remained unconvinced and continued to badger her for six more minutes, demanding that she admit that the videos proved wrongdoing. Instead of reacting negatively, Richards empathized with the confusion that he and many others felt from her initial apology. She explained that because of the uncertainty that surrounded the videos after their immediate release, she felt it was necessary to apologize for the doctors’ tones and their choice to conduct that conversation outside of a clinical environment. Richards conveyed her understanding of their concerns and shared her initial feeling of shock when she viewed the videos. She intended to reassure the public with her apology and to assert that the “[conversations recorded and edited] did not reflect the compassionate care [Planned Parenthood] provides.”²²⁸ By empathizing with those who did not agree and responding to the public’s concerns, Richards successfully displaying active listening.

The public believes it is irresponsible for an organization to try and shift the blame of its own scandal onto another group—even when that group is somehow involved. Similar to a mediator avoiding assigning blame or determining fault, Richards focused primarily on Planned Parenthood and allowed her Democratic allies to place blame on the forces working against the healthcare provider. Richards stressed this during her testimony when she stated, “[T]he facts are on our side. We are proud of the healthcare we deliver every single year, despite the animosity by some.”²²⁹ While friendly Committee members attacked the GOP, anti-choice groups, and specific individuals for waging a “war on women,”²³⁰ Richards continued to advocate

²²⁶ *Planned Parenthood Funding*, *supra* note 198.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*; *Planned Parenthood’s Taxpayer Funding Before the House Committee on Oversight and Government Reform* (Sept. 29, 2015) (statement of Rep. Carolyn B. Maloney), available at <https://maloney.house.gov/media-center/press-releases/rep-carolyn-b-maloney-opening-statement-at-oversight-hearing-on-planned>.

positively for Planned Parenthood. Richards helped Planned Parenthood significantly restore trust once the public considered her to be an accountable leader.

As the Committee hearing entered its ninth and final hour, it was blatantly obvious that Cecile Richards restored the public's trust in Planned Parenthood. Richards perfectly implemented the *Collaborative Component* by emulating a mediator's personality while applying a mediator's skills to the situation. The testimony proved to the public that Planned Parenthood and Cecile Richards had the ability to demonstrate the three elements needed to restore the public's trust—leadership, competency, and accountability.

IV. CONCLUSION

When an organization is in the center of a public scandal, it faces a serious threat to its survival. The implementation and execution of an organization's public relations strategy is often the determining factor for success. Organizations can survive a crisis by implementing a strategy composed of alternative dispute resolution techniques. The universally shared characteristics found in alternative dispute resolution processes match with the characteristics of a successful crisis communications response strategy. Organizations must implement a response strategy that addresses both its internal actions and external rhetoric. The *Richards Response Strategy* includes two components that employ negotiation and mediation skills. The *Combative Component* addresses the accusations while the *Collaborative Component* restores trust. By following the example set by Planned Parenthood during its 2015 scandal, the *Richards Response Strategy* equips organizations to successfully move past their public relations crises.